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BURLINGTON NORTHERN

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I. C. C.
FEE OPERATION



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FILE IN DOCKET

Office of the Secretary
Interstate Commerce Commission
Washington, D. C. 20423

February 20, 1976

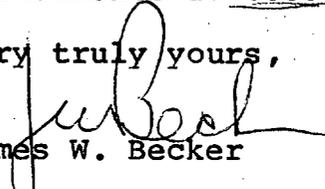
Gentlemen:

Please refer to my letter dated February 13, 1976 conveying for filing under Section 20c of the Interstate Commerce Act the following documents:

1. Conditional Sale Agreement dated as of January 1, 1976 between General Motors Corporation (Electro-Motive Division) and United States Trust Company of New York which was duly filed on February 19, 1976 and assigned recordation No. 8217.
2. Agreement and Assignment dated as of January 1, 1976 between General Motors Corporation (Electro-Motive Division) and Continental Illinois National Bank and Trust Company of Chicago which was duly filed on February 19, 1976 and assigned recordation No. 8217-A.
3. Lease of Railroad Equipment dated as of January 1, 1976 between Burlington Northern Inc. and United States Trust Company of New York which was duly filed on February 19, 1976 and assigned recordation No. 8217-B.
4. Assignment of Lease and Agreement dated as of January 1, 1976 between United States Trust Company of New York and Continental Illinois National Bank and Trust Company of Chicago which was duly filed on February 19, 1976 and assigned recordation No. 8217-C.

Supplementing that letter this is to advise that the AAR mechanical designation of the 45 3,000 hp Model SD 40-2 diesel locomotives included under the above referred to instruments is 0660.

Very truly yours,


James W. Becker

JB:je

8217^A
RECORDATION NO. Filed & Recorded

FEB 19 1976-8 15 AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of January 1, 1976

between

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

and

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO,
as Agent

AGREEMENT AND ASSIGNMENT dated as of January 1, 1976, between GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION) (hereinafter called the Builder) and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, acting as Agent under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement), said Agent, so acting, being hereinafter called the Assignee.

WHEREAS the Builder and UNITED STATES TRUST COMPANY OF NEW YORK, acting as Trustee (hereinafter called the Owner-Trustee), under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with General Electric Credit Corporation, Union Bank & Trust Company and Packers National Bank of Omaha (hereinafter together called the Owners) have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Owner-Trustee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment); and

WHEREAS the Owner-Trustee and Burlington Northern Inc. (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) providing for the lease to the Lessee of the Equipment, which Lease will be assigned by the Owner-Trustee to the Assignee pursuant to an Assignment of Lease and Agreement dated as of the date hereof (hereinafter called the Lease Assignment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Owner-Trustee, subject to payment by the Assignee to the Builder of the amount required to be paid pursuant to Section 4 hereof and by the Owner-Trustee to the Builder of the amounts due under subparagraph (a) of paragraph 4.3 of Article 4 of the Conditional Sale Agreement.

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of paragraph 4.3 of Article 4 thereof, paragraph 15.5 of Article 15 thereof and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement on account of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Owner-Trustee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all the Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Owner-Trustee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement, provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in paragraph 14.4 of Article 14 of the Conditional Sale Agreement or relieve the Owner-Trustee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 of the Conditional Sale Agreement (as such obligations are limited by Article 23 thereof) it being understood and agreed that, notwithstanding this Agreement, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Builder

to the Owner-Trustee with respect to the Equipment shall be and remain enforceable by the Owner-Trustee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Owner-Trustee with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Owner-Trustee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Owner-Trustee that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner-Trustee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Owner-Trustee thereunder. The Builder will not deliver any unit of the Equipment to the Owner-Trustee under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act and until settlement for any such unit has occurred pursuant to Section 4 hereof (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing and recordation have occurred).

SECTION 3. The Builder agrees with the Assignee

that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Owner-Trustee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner-Trustee or the Lessee by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Owner-Trustee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder

the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Owner-Trustee with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price thereof which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee (with an executed counterpart to the Owner-Trustee), on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) an instrument or instruments from the Builder to the Assignee and the Owner-Trustee confirming the conditional sale to the Owner-Trustee of the units of Equipment in such Group and transferring to the Assignee the security interest of the Builder in such units, warranting to the Assignee and to the Owner-Trustee that, at the time of delivery of such units under the Conditional Sale Agreement, the Builder had legal title to such units and good and lawful right to sell such units and that the Owner-Trustee received title to such units free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Assignee under the Conditional Sale Agreement and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement and § 2.1 of the Lease;

(c) the opinions of counsel and officers' certificates to the effect set forth in Paragraph 5.01 of

the Participation Agreement dated as of the date hereof among the Lessee, the Owners and the Owner-Trustee;

(d) an invoice of the Builder to the Assignee and the Owner-Trustee for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Owner-Trustee and the Lessee as to their approval thereof;

(e) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered by the respective parties thereto and are legal, valid and binding instrument enforceable in accordance with their terms, (iii) this Assignment and the Lease Assignment have been duly authorized, executed and delivered by the respective parties thereto and are legal, valid and binding instruments, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges of the Builder purported to be assigned to it by this Assignment, (v) the Assignee is vested with a valid security interest in the units of the Equipment in such Group and such units, at the time of delivery thereof to the Owner-Trustee under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and the rights of the Lessee under the Lease), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement, this Assignment, the Lease and the Lease Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia, and

(viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may be reasonably requested by the Assignee or such Investors;

(f) an opinion of counsel for the Owner-Trustee, dated as of such Closing Date, addressed to the Assignee and the Investors to the effect that the Conditional Sale Agreement, the Lease, the assignment thereof to the Assignee and the Trust Agreement have been duly authorized, executed and delivered by the Owner-Trustee and, assuming due authorization, execution and delivery by the other parties thereto, are legal and valid instruments binding upon the Owner-Trustee and enforceable against the Owner-Trustee in accordance with their terms;

(g) an opinion of counsel for the Builder, dated as of such Closing Date, addressed to the Assignee, the Investors and the Owner-Trustee, to the effect set forth in clauses (iv) and (v) of subparagraph (e) above and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder, assuming due authorization, execution and delivery by the Owner-Trustee, and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, and (iii) this Assignment has been duly authorized, executed and delivered by the Builder, assuming due authorization, execution and delivery by the Owner-Trustee, and is a legal and valid instrument binding upon the Builder;

(h) separate opinions of counsel for each Owner, dated as of the Closing Date, addressed to the Assignee, the Investors and the Owner-Trustee to the effect that the Trust Agreement has been duly authorized, executed and delivered by such Owner and, assuming due authoriza-

tion, execution and delivery by the Owner-Trustee, is a legal and valid instrument binding on such Owner;

(i) a certificate of an appropriate officer of each Owner to the effect that no Federal tax liens (including tax liens filed pursuant to section 6323 of the Internal Revenue Code of 1954, as amended) or, to the best of his knowledge and belief, any other tax liens have been filed and are currently in effect against such Owner which would adversely affect the security interest of the Assignee in the Equipment or the Lease; and

(j) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Owner Trustee.

In giving the opinions specified in subparagraphs (e), (f), (g) and (h) of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (e), counsel may rely (i) as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder and (ii) as to any matter governed by the law of any jurisdiction other than New York or the United States on the opinion of counsel for the Builder or the Lessee as to such matter.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available to make such payment and upon payment by the Owner-Trustee of the amount required to be paid by it pursuant to subparagraph (a) of paragraph 4.3 of Article 4 of the Conditional Sale Agreement. The Assignee shall not be obligated to make any of the above-mentioned payments at any time after the commencement of any proceedings specified in subparagraphs

(c) or (d) of paragraph 16.1 of Article 16 of the Conditional Sale Agreement or if an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Owner-Trustee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, the Owner-Trustee and their successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration; that, assuming due authorization, execution and delivery by the Owner-Trustee, the Conditional Sale Agreement is, in so far as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all

instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

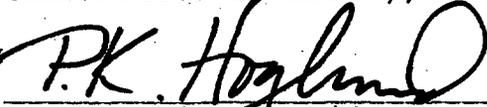
SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York, provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION),

by


Vice President

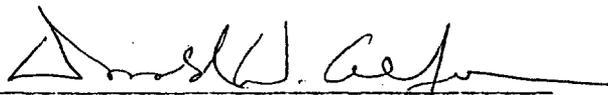
[Corporate Seal]

Attest:


Assistant Secretary



CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO,
as Agent,

by 
Vice President

[Corporate Seal]

Attest:


Trust Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of January 1, 1976.

UNITED STATES TRUST COMPANY OF
NEW YORK, as Trustee,

by

Alene B. Scocia
act Vice President